92-1657

No. _____

Supreme Court, U.S.
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In The

Supreme Court of the United States

October Term, 1992

CITY OF EAST PROVIDENCE,

Petitioner,

v.

ANN M. ROBINSON,

Respondent.

Petition For A Writ Of Certiorari To The Supreme Court Of Rhode Island

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Rhode Island Supreme Court erred in holding that the failure of City Councilman Edward J. Doyle to place the plaintiff's name in nomination for election by the City Council to the office of Special Police Officer constitutes a violation of the plaintiff's First Amendment rights pursuant to this court's decision in *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 110 S.Ct 2729, 111 L.Ed.2d 52 (1990)?

2. Did the court below base its decision that there was a violation of the Due Process clause of the Fourteenth Amendment of the Constitution of the United States based upon a state law that did not exist at the time the plaintiff claimed due process rights as a police matron?

PARTIES TO THE PROCEEDING

In addition to the parties named in the caption, the defendants in the original action were, City of East Providence, Mayor Edward J. Doyle, Joseph A. Botelho, Jr., Leo C. Sullivan, individually and in their capacities as members of the East Providence City Council; and Paul Tavares and Nancy Stevens, in their capacities as members of the East Providence City Council; and Charles Collins, in his capacity as City Treasurer. Only Edward J. Doyle in his official capacity was an appellant to the Rhode Island Supreme Court.

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PETITION FOR WRIT OF CERTIORARI

Now comes the City of East Providence, by its attorney, and prays that this Honorable Court issue a writ of certiorari to the Supreme Court of Rhode Island to review said court's decision.

OPINIONS BELOW

The case at bar was decided by the Rhode Island Supreme Court in a decision reported as *Ann M. Robinson v. City of East Providence, et al,* 617 A.2d. 1375, ___ RI ___ (1993). The decision of the Rhode Island Supreme Court is reprinted in full at pages App. 1 through App. 2 of the

appendix hereto. The decision of the Rhode Island Superior Court was an oral decision read into the record on July 26, 1991. The transcript of that opinion is reprinted in full at pages App. 3 through App. 15 of the appendix hereto.

STATEMENT OF JURISDICTION

The judgment of the Supreme Court of Rhode Island was entered on January 22, 1993. The jurisdiction of this Honorable Court is invoked pursuant to 28 U.S.C. § 1257(3) and by the Rules of the Supreme Court of the United States R. 10.1(c).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Pertinent portions of the following statutory and constitutional provisions involved in this case are set out beginning at page App. 16 of the appendix hereto:

U.S. Const. Amend. I;

U.S. Const. Amend. XIV, § 1;

42 U.S.C. § 1983;

R.I.G.L. § 45-16-7;

R.I.G.L. § 13-5-3;

GL 1938 ch. 338 § 2;

PL 1988 ch. 262 § 1

STATEMENT OF THE CASE

In January of 1987, plaintiff filed a shotgun civil rights action against the defendants, City of East Providence, Mayor Edward J. Doyle, Joseph A. Botelho, Jr., Leo C. Sullivan individually and in their capacity as members of the East Providence City Council; and Paul Tavares and Nancy Stevens in their capacity as members of the East Providence City Council and Charles Collins in his capacity as City Treasurer. The complaint alleged violations by the defendants of the plaintiff's rights as secured by Title 42 USC Sections 1981, 1983, and 1985, as well as a count alleging "State Law Violations". At the trial, the trial justice dismissed all claims brought pursuant to Title 42 USC § 1981 as the plaintiff produced absolutely no evidence of any discriminatory intent as to any act or conduct of any of the defendants in any of their capacities. The trial justice also dismissed the claims brought pursuant to Title 42 USC § 1983 against all defendants in all their capacities except Mayor Edward J. Doyle in his official capacity due to the plaintiff's failure to present any evidence that any of the plaintiff's alleged injuries were caused by the execution of a government policy, custom or official decision, or conduct of a government official whose acts represented the policy of the municipality. The court also dismissed all complaints brought pursuant to Title 42 USC § 1985 against all defendants in all their capacities due to the plaintiff's failure to present any evidence of a conspiracy on the part of any of the defendants or of any conduct that was motivated by a racial or class base invidiously discriminatory animus.

The trial justice did hold that Mayor Doyle violated the rights of the plaintiff because of his failure to nominate the plaintiff for election to the position of special police officer in February of 1985 concluding that Mayor Doyle's decision not to place the plaintiff's name in nomination for election by the City Council to the office of special police officer was politically motivated. (Superior Court Decision Transcript pages 151-153 at appendix pages App. 6-8.) The trial justice also found that the City of East Providence violated the plaintiff's procedural due process rights because the city did not give written notice of the reasons why it ceased to utilize the plaintiff's services as a police matron. (Superior Court Decision Transcript pages 153-154 at appendix pages App. 7-9.)

Judgment was entered against the City of East Providence in the amount of $20,490.00 plus interest for a total of $36,462.20 and the court ordered the City of East Providence to furnish Mrs. Robinson written notice of the reasons why it ceased to utilize her services as a police matron and give her an opportunity to respond. "Only after that occurs would it be fair to assess whether or not the city, through its officers or employees, acted improperly, and would therefore be liable in compensatory damages to the plaintiff on his [sic] procedural due process claim." (Superior Court Decision Transcript page 154 at appendix pages App. 8-9.)

Plaintiff, Ann Robinson, is a former special police officer for the City of East Providence first elected to that position by the City Council on June 7, 1982 to serve a term coextensive with that of the City Council in accordance with state law, R.I.G.L. § 45-16-7. Plaintiff served several terms as a special police officer and when her

final term of service ended on February 4, 1985 she was not renominated by any member of the City Council to serve another term as a special police officer.

Although plaintiff alleged that she served as a police matron from April of 1983 until February of 1985 she never was appointed a police matron as required by state law, R.I.G.L. § 13-5-3, G.L. 1938, ch. 338 § 2.

ARGUMENT

A. PLAINTIFF'S FIRST AMENDMENT RIGHTS OF FREE SPEECH AND ASSOCIATION WERE NOT VIOLATED BY MAYOR EDWARD J. DOYLE IN HIS OFFICIAL CAPACITY AND THEREFORE THERE CAN BE NO VIOLATION OF TITLE 42 USC § 1983.

The United States Supreme Court has long held the position that the Government may not dismiss, fail to promote, transfer or recall public employees based on their political beliefs and associations. *Rutan v. Republican Party of Illinois*, 497 U.S. 62, 110 S.Ct. 2729 (1990); *Branti v. Finkel*, 100 S.Ct. 1287 (1980); *Elrod v. Burns*, 96 S.Ct. 2673 (1976); and *Anthony v. Sundlun*, 952 F.2d 603 (1st Cir. 1991). However, it must be emphasized that unlike any of the factual situations in the cases cited above, the plaintiff here was not fired, was not passed over for promotion, nor was she left off of a recall list, nor was her application for a transfer denied. In the instant case, the plaintiff's term as a public officer had simply expired.

The City Council of the City of East Providence conducts its elections of special police officers in strict accordance with state law, R.I.G.L. § 45-16-7 entitled "Public officers" states:

> The town councils of the several towns may *elect* such number of police officers for their respective towns, as they may deem expedient, who shall not be required to give bond, nor shall be authorized to serve process in civil actions, but in all other matters they shall have the same power and authority as other officers; *and they shall continue in office during the pleasure of the town council, and no longer;* provided, that they shall not remain in office by virtue of the election by the town council for more than ten (10) days after the expiration of the term for which the town council was elected . . . (emphasis added)

The legislature specifically intended by this provision to establish a procedure by which city/town councils may appoint their special police officers, i.e. by election. Therefore, the process by which the East Providence City Council appoints its special police officers is in clear conformity with state law. A City Council member places in nomination names of candidates which are to be voted on and seconded by the City Council to the elected position of special police officer. Any City Council member may place the name of a qualified East Providence citizen he/she chooses in nomination. They may choose to submit into nomination those outside of their wards if they feel that he/she qualifies to be considered for election or re-election as a special officer. In the instant case, plaintiff's name was never submitted into nomination by *any*

member of the City Council and thus she was not re-elected. The fact that plaintiff was not nominated by Mayor Doyle is of no special consequence since any other member of the City Council could have placed the plaintiff's name in nomination. Additionally, the plaintiff would have had to receive a majority vote of the City Council to be elected. This election procedure is distinctly different from any other procedure examined by the courts in the context of this issue. It was undisputed at trial that the plaintiff knew and understood the procedures by which the City Council re-elects its special officers. Plaintiff, realizing that she might not be re-nominated again by Mayor Doyle, clearly knew and understood the fact that she could contact any of the other four City Council members besides Mayor Doyle and request for her re-nomination into the position of special police officer. For that reason, plaintiff may not simply assert First Amendment protection and expect to be automatically re-elected whenever her term of service expires. Such conduct if permitted, would be in violation of a state law which implements a clearly constitutional process for the election of special police officers.

The trial justice erroneously applied the doctrine enunciated in *Elrod, supra*, and its progeny to the circumstances of this case. In *Elrod, supra* respondents who were non-civil-service employees were discharged for the sole reason that they were not affiliated with or sponsored by the political affiliation of their superiors. Unlike *Elrod*, the position of special officer has never been recognized by the City of East Providence as having "employee" status, whether civil or non-civil. Also, plaintiff was never "dismissed" from her position as special police officer; her

term as special police officer had simply expired. Thus, when it came time for her re-election by the City Council, she was not re-nominated by any of the City Council members. Even if the court in following *Elrod* had determined that the position of special police is that of a civil or non-civil service type "employee", plaintiff still cannot ignore the fact that her term by State Law runs coextensively with and at the pleasure of the City Council, therefore, plaintiff cannot expect an automatic continuation of her employment based upon her years of service whenever her term of service expires. Thus, the application of the trial justice of the doctrine enunciated in *Elrod*, and its progeny to the circumstances of this case is inappropriate and not required by logic or policy.

To sustain a claim pursuant to Title 42 USC § 1983, the plaintiff must prove (a) that she had been deprived of rights secured by the Constitution of the United States and other federal law; (b) that defendant, Mayor Doyle, was responsible for the deprivation of said rights; (c) that defendant, Mayor Doyle, was acting under color of law; and (d) that damages resulted from this deprivation. As stated previously, it was a practical impossibility for defendant, Mayor Doyle, to be responsible for the deprivation of the First Amendment rights to the plaintiff, because even if defendant, Mayor Doyle, had the requisite intent he simply could not carry it out as any one of the four other members of the City Council could have placed the plaintiff's name in nomination for the position of special police officer and it would have taken the majority of votes to defeat the nomination. Finally, even if such conduct could have violated the plaintiff's rights under § 1983, the plaintiff failed to prove any damages

resulting from said conduct. There was simply insufficient evidence to prove any financial damages sustained by the plaintiff and the trial justice's conclusions on damages were made on assumptions not supported by evidence as even the trial justice concluded "I am aware that there have been affidavits filed in good faith by the plaintiff concerning an expectation of what hours she would be working had she been employed, but I feel that that is too speculative to base a compensatory award on." (Superior Court Decision Transcript page 157 at appendix pages App. 10-11.) The trial justice's finding of damages is clearly erroneous and should be reversed. *Pereira v. Tellier,* 583 A.2d 523 (RI 1990); *Lisi v. Marra,* 424 A.2d 1053 (RI 1981).

B. THE COURT BELOW BASED ITS DECISION THAT THERE WAS A VIOLATION OF THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT OF THE CONSTITUTION OF THE UNITED STATES UPON A STATE LAW THAT DID NOT EXIST AT THE TIME MS. ROBINSON CLAIMED DUE PROCESS RIGHTS AS A POLICE MATRON.

In 1983, the time in which the plaintiff claims she was appointed a matron, R.I.G.L. § 13-5-3 entitled "Appointment and removal of matrons." stated:

> Immediately upon such designation of a station house in any city, *the mayor,* or the police board, commission or bureau, thereof, as the case may be, shall appoint for each station house so designated, . . . and in each of the other cities one (1) respectable woman, who shall be known as police matrons. No woman shall be appointed police matron unless recommended for such

> office in writing by at least twenty (20) women in good standing and residents in the city in which such appointment is made. A police matron shall not be appointed for any definite term, but to hold office until removal. She may be removed at any time for cause by the mayor, or other appointing body, by a written order stating the cause of removal. . . . (emphasis added).

At trial the plaintiff never produced any evidence that she was so appointed and in fact relied upon an unlawful appointment by the police chief. Plaintiff was simply one of a group of female special police officers at that time who were occasionally called upon to supervise female prisoners. Plaintiff cannot ignore the specific statutory procedures required to be appointed a police matron. Plaintiff cannot claim the benefits and protections of the position of police matron based upon a letter from a police chief without authority or interdepartmental references to her as a matron.

The court in concluding that the plaintiff had been a matron erroneously relied upon R.I.G.L. § 13-5-3 as it was amended in 1988. (Superior Court Decision Transcript page 153 at appendix pages App. 7-8.) It was not until the statute was amended in 1988 (R.I.G.L. § 13-5-3; P.L. 1988 ch. 262, § 1) that police chiefs' were given the authority to appoint matrons. Therefore, since plaintiff was never legally appointed as a matron there was no duty on the part of the city to give her notice that her services as a matron would no longer be utilized. Finally, even though the plaintiff may have performed matron-like duties, i.e. supervision of female prisoners in custody, which she was no longer called upon to do once she was not

reelected as a special police officer, the mere performance of those matron-like duties does not entitle the plaintiff to any type of procedural due process notice.

CONCLUSION

Petitioner requests that this Petition be granted.

Respectfully submitted,

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3850c

Supreme Court
No. 91-657 – Appeal.

Ann M. Robinson :

v. :

City of East Providence et al.:

ORDER

The defendants, the city of East Providence, and the former mayor of said city in his official capacity appeal from a judgment of the Superior Court which awarded Ann M. Robinson damages in the amount of $36,462.20 including interest for a violation of her civil rights as guaranteed by the First Amendment of the Constitution of the United States and further protected by 42 U.S.C. §§ 1981, 1983 and 1985. Counsel for the parties came before this court January 19, 1993 for oral argument pursuant to an order which had directed the defendants to appear in order to show cause why their appeal should not be summarily denied and dismissed.

After hearing the oral argument and examining the memoranda filed by the parties, we are of the opinion that cause has not been shown.

The trial justice found that the former mayor of East Providence had denied reappointment to the plaintiff as a police constable for political reasons after she had failed to support him in an election for the office of City Council. The trial justice also held the city liable for terminating the plaintiff's position as a police matron, after she

had served in that capacity from April of 1983 until February 1985. The plaintiff was never given a notice of a hearing prior to her removal from the position of police matron. We are of the opinion that the case of *Rutan v. Republican Party of Illinois*, ___ U.S. ___, 110 S. Ct. 2729, 111 L. Ed. 2d 52 (1990) is controlling. In that case a majority of the Supreme Court determined that one might not be deprived of employment by reason of discharge, failure to recall, promote, or failure to hire for purely political reasons. In this case the refusal to reappoint the plaintiff or to continue her employment as a police matron constituted a violation of her First Amendment rights.

The appeal of the defendants is denied and dismissed. The judgment entered by the Superior Court is hereby affirmed.

Entered as an Order of this Court this 22nd day of January 1993.

By Order,

/s/ Brian B. Burns
Clerk

Mrs. Justice Murray did not participate.

SUPERIOR COURT DECISION TRANSCRIPT
(Pages 147-162)

JULY 26, 1991

[p. 147] THE COURT: Good afternoon. This is the matter of *Ann M. Robinson vs. The City of East Providence,* 87-0210. The two remaining defendants in this matter are The City of East Providence as it pertains to the procedural due process claim and Defendant, Mayor Edward J. Doyle in his official capacity.

Before I deliver my final decision in this case I want to address the issue raised by the Plaintiff yesterday concerning a procedural due process claim against the City of East Providence with regard to the so-called ten-year rule. The Plaintiff argues that being on a preferential list of long-serving constables gave her a legitimate expectation of continued employment, and that she would have been automatically reappointed at the expiration of each term without the concern of approaching council person for nomination.

The long-standing constable issue was brought before the City Council in East Providence at the April 6, 1981 meeting, and this is reflected in the minutes of that council meeting which have been introduced into evidence. As far as I can determine from the evidence, that is the first instance in which the maintenance of a list of various categories of constables was discussed. It was unanimously voted at that April 6 meeting that [p. 148] there would be a list of retired police officers and also a list of long-serving officers. Each of those lists was to be read by the Mayor. The list was then moved and seconded by council members for appointment. It was not a

situation where the list was merely read by the Mayor as indicated in the council minutes, and that that results in the automatic appointment of those individuals. There was actually a motion, and it was required that that motion be seconded of the nominees for appointment by the City Council, and that is regardless of their status as a long-serving officer or a retired police officer within the City.

It is not possible to determine from the evidence whether the Plaintiff's name, that is Ann Marie Robinson, was intentionally omitted from such a list or negligently omitted from such a list, or that such a list was even in existence at the pertinent time. As I indicated, the first reflection of such a discussion occurred at the 1981 meeting. Mrs. Robinson would have been eligible for a ten-year service, this so-called ten years of service in 1983.

In any event, in my opinion, there is insufficient evidence to demonstrate a probability of automatic renewal as contended, which would give rise to a due process right. In this respect there exists that [p. 149] possibility, of course, but to say that a procedural due process right arose as to this particular issue, it would require an inferential leap which this Court would regard as unsound, based on the circumstance. Thus in my opinion, the Plaintiff has no procedural due process claim in that limited respect.

Now in this matter, the Court has heard the testimony of numerous witnesses and has also examined each of the documents which have been introduced as full exhibits in this case during the trial. The first witness in the trial was the Plaintiff's husband, James Robinson, Jr.

Mr. Robinson was appointed as a special police officer on May 22, 1967 by the City Manager. He testified that he was reappointed every year without advocation. Mr. Robinson indicated that he had been a long-time neighbor of the Defendant, Mayor Edward Doyle; and when Mr. Doyle ran for a City Council position, both Mr. and Mrs. Robinson assisted him in his campaign with the displays of signs and also with the conducting of a coffee hour through the Plaintiff's mother. Because Plaintiff's sister, Eleanor Foeri, ran against a Defendant, Mr. Doyle, in the 1984 election, the Robinson's were understandably inactive in that particular campaign. And I am referring to the campaign of Defendant Doyle.

[p. 150] When Mrs. Foeri lost the election, the Robinson's were concerned about whether or not Defendant, Doyle, would reappoint them. Mr. Robinson indicated that he called Mr. Doyle to inquire as to his and his wife's status. When he specifically asked Mr. Doyle whether or not they, meaning Mr. and Mrs. Robinson, were going to be reappointed, the Defendant replied, "Other people helped me this time." When Mr. Robinson referenced all the other years of assistance that the couple had provided to Defendant Doyle, the Defendant responded "If you say so." This testimony is corroborated by the Plaintiff in that she shared her husband's portion of this telephone conversation and confirmed that he, meaning James, her husband, inquired for both the Plaintiff, Ann Marie Robinson, and himself James Robinson.

The Defendant, Mr. Doyle, admitted that Mr. Robinson called, but insisted that he confined his inquiry to his own status and did not mention his wife, the Plaintiff. In

this Court's opinion, the Plaintiff's version of this conversation is the more credible one. We have a couple who worked for many years at the same job. It was the husband's long-standing acquaintance with the Defendant, Mr. Doyle, which resulted in Mr. Doyle's becoming his sponsor. But as the years [p. 151] progressed, Mr. Doyle was consistently nominating both Ann Marie Robinson and James Robinson.

Both Robinson's had worked on previous Doyle campaigns, and as I indicated, it was Mrs. Robinson's mother who organized a party for Mr. Doyle during one of his prior campaigns. It is inconceivable to me that considering the circumstance in which the Robinson's found themselves after the 1984 election, and considering the commonalty [sic] of interests that the Robinson's shared professionally as well as husband and wife, that one spouse would call Mr. Doyle and not inquire of the other's status. When the next opportunity arose for Defendant, Doyle to renominate the Plaintiff as he repeatedly had done in the past, he failed to do so. At the February 4, 1985 council meeting, he nominated 14 out of his 15 allotted individuals, and excluded the Plaintiff, Ann Marie Robinson.

The Plaintiff has, in my opinion, sustained her burden of proving that Defendant, Doyle's decision in this respect was politically motivated, and the result of patronage practices on his part. It is clearly violative of the Plaintiff's Constitutional Rights to condition her public employment on her profession of support for the Defendant, or upon her political [p. 152] beliefs, or upon her political affiliation. As the United States Supreme Court stated in the [sic] *Rutan*, conditioning employment

on political activity pressures employees to political allegiance to a party with which they prefer not to associate, to work for the election of police candidates they do not support, and to contribute money to be used to further policies with which they do not agree. And this is taken tantamount to coerced belief. At the same time, employees are constrained from joining, working for, or contributing to, the political party of their own choice.

As I stated yesterday, again quoting U.S. Supreme Court, unless patronage practices are narrowly tailored to vital governmental interests, we must conclude that they impermissibly approach [sic] on First Amendment freedoms. Patronage is a very effective impediment to the social and speech freedoms which are essential to a meaningful system of democratic government.

Since this Plaintiff's political beliefs and her political associations were not legitimate factors for Defendant, Doyle to utilize considering the Plaintiff's position, her First Amendment Rights were impermissibly encroached upon. The Court will enter judgment in favor of the Plaintiff against Defendant, Doyle in his official capacity on the 1983 cause of action alleging [p. 153] the deprevation [sic] of her civil rights.

I shall now turn to a discussion of the cause of action remaining against the City of East Providence. With regard to the police matron position. The plaintiff testified that she had worked as a police matron from 1983 until February 4th of 1985 for the sum, I believe, of $8 an hour. This is a position in which the matrons would be requested to report to work on an as-needed basis; that is, when attendants were required for female prisoners.

State law provides that police matrons shall remain in office once appointed by the chief until removal. If the appointing authority wishes to remove a matron, written notice of that intention stating the cause must be supplied to the employee. In this case, the evidence is uncontroverted that the City, through its Police Chief, failed to comply with that requirement. This constitutes a violation of the Plaintiff's procedural due process rights. If the City's failure to engage Mrs. Robinson's services as a police matron was for good cause, then of course the City would be absolved on this particular issue. If not, then the City would be liable to her for compensatory damages.

Since there was no notice to Mrs. Robinson or hearing for her on this issue, there is no evidence [p. 154] before me as to why this occurred, absent any assumptions that in my mind are not justified and would not be based on the evidence. Thus, the City will be ordered to furnish to Mrs. Robinson written notice of the reasons why it, the city, ceased to utilize her services as a police matron.

They are further ordered to afford Mrs. Robinson an opportunity to respond to such a statement. Only after that occurs would it be fair to assess whether or not the City, through its officers or employees, acted improperly, and would therefore be liable in compensatory damages to the Plaintiff on this procedural due process claim.

As to the police constable position. Having found that the Plaintiff was wrongfully eliminated from the nomination list for impermissible reasons resulting in her nonemployment as a police constable, the Court is going

to order that Mrs. Robinson be reinstated forthwith to her position as a police constable for the City of East Providence. This assumes, of course, that there has been no intervening impediment which would disqualify her from serving as a police constable, such as a physical disability, or a lack of qualifications, or something in that nature.

Now on the issue of punitive damages. This was [p. 155] raised yesterday by the Plaintiff and this form of relief was also requested in the lawsuit. Punitive damages are appropriate in the 1983 action when the Defendant's conduct is motivated by evil intent and involves a careless or reckless indifference to federally-protected rights. In order to justify such an award, it must be proven that the Defendant acted with ill will and a desire to injure. The allowance of such damages, Courts have stated, involve an evaluation of the conduct in question, the wisdom of pecuniary punishment, and the advisability of a deterrent.

In this case, there is no evidence that Defendant, Mr. Doyle, harbored any evil or malicious intent toward the Plaintiff. There is no evidence that he desired to injure her or stigmatize her. Although I found that Defendant Doyle's conduct was politically motivated, I do not believe that he recognized the First Amendment deprivation to the Plaintiff at the time. There is no evidence that he assessed the situation, and that design embarked upon a course of behavior which would result in constitutional injury to Mrs. Robinson.

The Court is aware that punitive damages have been approved in political firing cases, but I believe those

cases to be distinguishable from Mrs. Robinson's case. *Wulf vs. City of Wichita* 644 Fed Sup, page 1211. [p. 156] Obviously – a Kansas case. In that case, a police officer was fired by the Police Chief for exercising his First Amendment Rights. That act of firing was then ratified by the City Manager, who along with the chief, was held personally liable after a trial. In that case, the Defendant had threatened revenge against the Plaintiff for a letter that the fired police officer had written to the Attorney General concerning some other matter in which the police officer exercised his First Amendment Rights. The prime defendant in that case then conducted surveillances on the Plaintiff to see if he was engaging in any misconduct, and than [sic] he summarily fired him, groundlessly, but on the pretext of insubordination. The Defendant in the *Wulf* case literally ruined the police officer's career, smeared his reputation, maligned him to future employers.

The Court, in approving punitive damage award in that case, recognized the value of deterring others in the Defendant's position of authority from callously disregarding Constitutional Rights of their employees. In any event, the circumstances of Mrs. Robinson's case do not compare to that situation, and in my estimation do not justify an award of punitive damages.

As to compensatory damages. I do believe that Mrs. Robinson is entitled to an award for back pay [p. 157] commencing on February 4th of 1985 to the date that this trial commenced. In my opinion, however, the only fair way of calculating this figure is to calculate the total number of hours Mrs. Robinson worked as a police constable and divide that figure by the number of years she was employed as a constable in order to arrive at an

average yearly figure. That figure would then be applied to the years in which Mrs. Robinson was wrongfully unemployed as a police constable.

I am a aware that there have been affidavits filed in good faith by the Plaintiff concerning an expectation of what hours she would be working had she been employed, but I feel that that is too speculative to base a compensatory award on. Now, in going through these calculations, I really need to review with the attorneys before I arrive at a figure, the accuracy of the material that has been presented to the Court; and if you are ready to do that now, I would like to do that now. We can start.

The material that I have, gentlemen, indicates that in 1973 Mrs. Robinson earned $570. I have determined that the pay rate at that time was $6, so that would result in her having worked 95 hours that year.

MR. CONLEY: That seems logical.

[p. 158] MR. MELISH: Yes, but it was just for three-and-a-half-months of that year, not a full year.

THE COURT: You can speak, Mrs. Robinson.

MRS. ROBINSON: I went on in September and the new year comes in.

THE COURT: That represents three months. That was three months?

MRS. ROBINSON: Yes.

THE COURT: So that was – okay. So that was really one-fourth of the year.

MR. MELISH: Three hundred and eighty hours.

THE COURT: She would have worked 380 hours a year, just to use that as a yearly figure. Mr. Conley, I saw the expression. I am not sure if that is an objection.

MR. CONLEY: No, it is not Your Honor. I'm sorry.

THE COURT: Three hundred and eighty hours for 1973. In 1974, I have an income of $2,880. Again, I utilized the $6 pay rate, and I have 480 hours for that year. If anybody has any objections, just yell out. I am going to keep going.

MR. CONLEY: Any hesitancy that I showed earlier, I apologize. I am not good with numbers.

THE COURT: In 1975, I have got a figure of $2,489. Again, I utilized the $6 an hour, and I arrived at 415 hours for 1975. Now, next I have 1976, earnings of [p. 159] $2,186. I have a pay rate, gentlemen, and am not sure if the pay rate went back a year, but I have got a $7 pay rate at that time. Does that sound correct?

MR. MELISH: Exhibit 25 indicates that as of November 1st of 1976, the rate was $7. That is the first indication that the chart has, and it is based on the fiscal year.

MR. CONLEY: The reason for that is, we have very strange fiscal year in East Providence. It begins on November 1.

THE COURT: I notice that.

MR. CONLEY: That is when the pay raises go out, and that is the date.

THE COURT: And the earnings would have been calculated by, not by that. In other words, we are using

pay rate for that physical [sic] year, but the earnings do not represent the same physical [sic] year.

MR. CONLEY: That is correct? Earnings represent calendar year. So it is two months off. In other words, the fiscal year and the calendar year are two months off.

THE COURT: What do you suggest? That means that all of my calculations will not be accurate.

MR. CONLEY: Would it be any assistance, Your Honor, since we know the method of the Court's – we [p. 160] know the judgment, method of award, perhaps we could each calculate and agree on what the figure is?

THE COURT: That would be fine. All right, does anyone have any objection to the utilization of that method; that is to add up the total number of hours and get an average yearly figure? I think that is the most accurate and fair way to calculate compensatory. For purposes of calculations, does anyone object to that?

MR. MELISH: I think it is fair.

MR. CONLEY: Yes.

THE COURT: Do you wish to do it?

MR. CONLEY: Could we do it over the next couple of days?

THE COURT: You can do it on Saturday and Sunday. And I had a question, also, gentlemen. For 1977, I have no material. I have – for 1978 and 1979 I had zero earnings, is that correct?

MR. CONLEY: That is correct, Your Honor.

THE COURT: In 1977 I did not see an earning sheet.

MR. CONLEY: There were no earnings, Your Honor, that is why it is not on there.

THE COURT: I had zero for that, but then in reviewing Mrs. Robinson's testimony, there was some testimony from her that she worked as a school crossing guard 20 hours a week during that year.

[p. 161] MR. CONLEY: Not in '77, Your Honor. That is not the record I show.

THE COURT: For the year '78, I'm sorry; '77, '78 and '79, I have zero earnings. During – unless Mrs. Robinson was physically disabled from working those years, those years should be utilized in calculating the average.

MR. CONLEY: That is right. That is the way I would do it, Your Honor.

THE COURT: All right. In 1987, I have earnings – why do we have earnings in 1987?

MR. MELISH: She worked as a monitor for the school department.

MR. CONLEY: In other words, if you remember her testimony, Your Honor, she then got a job as a school bus monitor before she went to work for Rider.

THE COURT: And was being paid by the City?

MR. CONLEY: That is who pays for that.

MR. MELISH: It is a part-time job.

THE COURT: I know that she was working as bus driver, but I wasn't clear on that. In the 1985 figure of $744 represents, that was –

MR. MELISH: That represents one month's.

THE COURT: That was one month. I will be here all next week, so when you have a portion of the pay rate, [p. 162] apportioned the pay rate, and have figured out the damages, you can contact me and we will enter a specific sum on the record.

All right, everyone has an objection to that portion of the ruling that does not favor their client. I want to thank the attorneys for the hard work that each of them did in this case. You were both very thorough. The City could not have been better represented. Mrs. Robinson, you could not have been better represented. You were both very professional and very thorough in your research, and it was a pleasure to work with two people who take their jobs seriously.

MR. CONLEY: Thank you very much, Your Honor.

MR. MELISH: Thank you.

(ADJOURNED)

ARTICLE I

Religious and political freedom. – Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the government for a redress of grievances.

ARTICLE XIV
RIGHTS OF CITIZENS

§ 1. Citizenship – Privileges and immunities – Due process – Equal protection of laws. – All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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§ 1983. Civil action for deprivation of rights

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any

rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

R.S. § 1979; Pub.L. 96-170, § 1, Dec. 29, 1979, 93 Stat. 1284.

45-16-7. Police officers. – The town councils of the several towns may elect such number of police officers for their respective towns, as they may deem expedient, who shall not be required to give bond, nor shall they be authorized to serve process in civil actions, but in all other matters they shall have the same power and authority as other officers; and they shall continue in office during the pleasure of the town council, and no longer; provided, that they shall not remain in office by virtue of the election by the town council for more than ten (10) days after the expiration of the term for which the town council was elected, provided, however, that the town council of town of East Greenwich shall not elect but may appoint such number of police officers as it may deem expedient, who shall be residents of Rhode Island and who shall not remain in office by virtue of the appointment by the town council for more than ten (10) days after the term for which the town council was elected and who shall be subject to all the other provisions of this section.

13-5-3. Appointment and removal of matrons. – Immediately upon such designation of a station house in any city, the mayor, or the police board, commission or bureau, thereof, as the case may be, shall appoint for each station house so designated, in the city of Providence two (2) respectable women, and in each of the other cities one (1) respectable woman, who shall be known as police matrons. No woman shall be appointed police matron unless recommended for such office in writing by at least twenty (20) women in good standing and residents in the city in which such appointment is made. A police matron shall not be appointed for any definite term, but to hold office until removal. She may be removed at any time for cause by the mayor, or other appointing body, by a written order stating the cause of removal. Upon the death, resignation or removal of a police matron, her successor shall be appointed in the manner aforesaid as soon as may be.

CHAPTER 338.

(Gen. Laws, 1923, Ch. 415;
Pub. Laws, 1910, Ch. 626.)

STATION-HOUSES FOR WOMEN AND POLICE MATRONS.

§ 1. Designation of police stations for women.

§ 2. Police matrons, appointment and removal of.

§ 3. Hours of service of matron.

§ 4. Authority of matron.

§ 5. Accommodations at police station.

§ 6. Matron to have charge of female prisoners.

§ 7. Matron to attend police or district court.

§ 8. Words, "police station," and "woman," how construed.

§ 9. Salary of matron.

§ 10. Saving clauses as to special statutes.

§ 1. The board of aldermen in every city in this state, except the board of aldermen of the city of Pawtucket, shall designate one or more station-houses within their respective cities for the detention of all women under arrest; and such boards of aldermen may, at any time, so designate any additional station-house or station-houses, and may declare such station-house or station-houses to be no longer so designated: *Provided*, at least one such station-house shall always remain so designated in each city.

§ 2. Immediately upon such designation of a station-house in any city, the mayor, or the police board, commission or bureau, thereof, as the case may be, shall appoint for each station-house so designated, in the city of Providence 2 respectable women, and in each of the other cities one respectable woman, who shall be known as police matrons. No woman shall be appointed police matron unless recommended for such office in writing by at least 20 women in good standing and residents in the city in which such appointment is made. A police matron shall not be appointed for any definite term, but to hold office until removal. She may be removed at any time for

cause by the mayor, or other appointing body, by a written order stating the cause of removal. Upon the death, resignation or removal of a police matron, her successor shall be appointed in the manner aforesaid as soon as may be.

§ 3. The respective hours of service of the police matrons shall be so arranged by the authorities in charge of the police department that, in the city of Providence, at least one matron shall at all hours of the day and night be on duty, and in each of the other cities one shall at all hours be near to and within call of each police station designated as above provided. Every police matron within the city of Providence shall, during her hours of service, remain constantly on duty at the station at which she serves, and every police matron in each of the other cities shall reside at or near the station to which she is attached, and shall hold herself in readiness to answer any call therefrom during her hours of service so long as any woman remains confined therein.

§ 4. The police matron shall have, subject only to the general control of the head of the police department, the entire care of all women held under arrest in the station in which she serves or to which she is attached, and she may at any time call upon any police officer in such station for assistance.

§ 5. In every station in which a police matron serves, or to which a police matron is attached, sufficient and proper accommodations shall be provided for women confined under arrest, and in case such accommodations shall be insufficient or improper such matron shall notify the mayor; and it shall be the duty of the

mayor to lay the matter before the city council, and of the city council to provide, at the expense of the city, such sufficient and proper accommodations.

§ 6. Whenever, in any city where any police matron shall be appointed under this chapter, a woman is arresied and taken to a police station to which a matron is attached, and where such matron is not then present, it shall be the duty of the officer in charge of such station to cause such matron to be summoned forthwith; and whenever, in any city in which a police matron has been appointed, a woman is arrested and taken to the stationhouse to which no matron is attached, it shall be the duty of the officer in charge to cause such woman prisoner to be removed, as soon as possible, to the nearest stationhouse to which a police matron is attached.

§ 7. At least one police matron in each city shall be designated by the chief of police of said city to attend before the district and police courts at all times when any woman is to be arraigned before such Court, and shall have charge of all women there in attendance awaiting trial or transfer from the court to any other place of detention.

§ 8. In this chapter the expression "police station" shall include any place where persons are temporarily confined under arrest; the expression "woman" shall include any person of the female sex.

§ 9. The salary of the police matrons in each city shall be fixed by the city council.

§ 10. The provisions of this chapter shall be subject to the provisions of any special statutes relating to any

particular town or city, none of which are hereby repealed.

CHAPTER 262

88-S 2181A
Approved Jun. 7, 1988.

AN ACT RELATING TO POLICE MATRONS

It is enacted by the General Assembly as follows:

SECTION 1. **SECTIONS 13-5-3 AND 13-5-6 OF THE GENERAL LAWS IN CHAPTER 13-5 ENTITLED "STATION HOUSES FOR WOMEN" ARE HEREBY AMENDED TO READ AS FOLLOWS:**

13-5-3. Appointment and removal of matrons. – ~~Immediately upon such designation of a station house in any city, the mayor, or the police board; commission or bureau; thereof, as the case may be, shall appoint for each station house so designated, in the city of Providence two (2) respectable women and in each of the other cities one (1) respectable woman, who shall be known as police matrons. No woman shall be appointed police matron unless recommended for such office in writing by at least twenty (20) women in good standing and residents in the city in which such appointment is made~~. The police chief of every city and town shall appoint at least one (1) woman who shall be known as a police matron. The public safety commission of the city of Providence shall appoint at least two (2) women who shall be known as police matrons. A police matron shall not be appointed for any definite term, but to hold office until removal. She may be removed at any time for cause by the ~~mayor, or other~~ appointing body, by a written order stating the cause of removal. ~~Upon the death, resignation, or~~

~~removal of a police matron, her successor shall be appointed in the manner aforesaid as soon as may be.~~ Said police matrons shall assist with the confinement of all female prisoners.

13-5-6. Accommodations for female prisoners. – In every station in which a police matron serves, or to which a police matron is attached, sufficient and proper accommodations shall be provided for women confined under arrest, and in case such accommodations shall be insufficient or improper such matron shall notify the ~~mayor~~; police chief; and it shall be the duty of the ~~mayor to lay the matter before~~ police chief to notify the city or town council, and of the city or town council to provide, at the expense of the city or town, such sufficient and proper accommodations.

SECTION 2. This act shall take effect upon passage.

Supreme Court, U.S.
FILED
MAY 10 1993
OFFICE OF THE CLERK

No. 92-1657

In The

Supreme Court of the United States

October Term, 1992

CITY OF EAST PROVIDENCE,

Petitioner,

v.

ANN M. ROBINSON,

Respondent.

On Petition For A Writ Of Certioriari To the Supreme Court Of Rhode Island

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

1. Whether the Rhode Island Supreme Court correctly held that the former mayor of East Providence violated the First Amendment when he failed to reappoint respondent to her non-policy making position as Police Constable solely because she supported his electoral opponent.

2. Whether the Rhode Island Supreme Court correctly held that the City of East Providence violated Respondent's Fourteenth Amendment rights to notice and a hearing before removing her from her position as Police Matron.

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INTRODUCTION

The facts of this case represent a classic example of political retaliation against a city employee in violation of well-established law. Specifically, the Rhode Island Supreme Court concluded that Edward Doyle, the former Mayor of East Providence, violated the First Amendment when he refused to reappoint respondent to her non-policymaking position as Police Constable solely because her sister had unsuccessfully run against petitioner for political office. The Rhode Island Supreme Court also held that the City's decision to dismiss respondent from her position as a Police Matron without notice or a hearing violated the due process guarantees of the Fourteenth Amendment.

Both of these holdings are fully consistent with this Court's decisions. Accordingly, petitioner is unable to identify any conflict with the holdings of lower courts or issues of national significance presented by this case. Instead, petitioner's argument amounts to nothing more than a disagreement with the factual findings below. Those findings, however, are not properly before the Court. Likewise, the ruling by the Rhode Island Supreme Court regarding respondent's employment status under state law is final and binding on this Court. Consequently, there is no basis for plenary review and the petition for certiorari should be dismissed.

STATEMENT OF FACTS

The Petition misstates certain critical facts that are necessary in understanding the decision below. The relevant facts are that Ann Robinson was hired as a Police Constable on September 11, 1973 (not on June 7, 1982, as petitioner mistakenly alleges), and so served continuously through February 4, 1985. Mrs. Robinson was reappointed annually and had an exemplary work record as a Police Constable.

In 1980 the East Providence City Council implemented a patronage system in which it gave each of five council persons fifteen appointments of police constables, in addition to the separate list of constables annually reappointed who had served at least 10 years. Thus each council person could appoint or reappoint many more than 15 persons to serve as police constables. The City Council continues this patronage practice and has now expanded to 20 the number of police constables each Council member may appoint.

In the fall of 1984 Mrs. Eleanor Foeri, respondent's sister, ran for the Ward 4 council seat held by Edward J. Doyle. Respondent and her husband (Jim Robinson had served continuously as a police constable since 1967) had been long-time supporters of Councilman Doyle but decided not to support his campaign against Mrs. Foeri. After the election Mr. Robinson called Mr. Doyle to request that he and his wife be reappointed and was told that "other people helped me this time." App. 5.

In addition to her duties as a Police Constable, respondent was appointed as a police matron in April of 1983 and so served along with Eileen Benson, Avis Prior,

Virginia Iacono, Virginia DeFreitas, and Nancy Cahir. She was paid by the City at the rate of $8.00 per hour and was abruptly terminated on February 4, 1985, after Mayor Doyle failed to reappoint her to the Police Constable position. The City continued to use Matrons through April of 1986. Mrs. Robinson was never given notice or a hearing prior to her removal as a matron.

After hearing sixteen witnesses and reviewing approximately thirty exhibits, the trial court made the following findings of fact:

1. Mr. Robinson was appointed as a Police Constable on 5/22/67 by the City Manager and was reappointed every year without advocation. App. 5.

2. Mr. Robinson was a long-time neighbor of Mr. Doyle. App. 5.

3. Both Mr. and Mrs. Robinson assisted Mr. Doyle in his campaigns for the City Council with displays of signs and also with the conducting of a coffee hour. App. 5.

4. As the years progressed, Mr. Doyle consistently nominated both Mr. and Mrs. Robinson as Police Constables. App. 6.

5. Mr. and Mrs. Robinson were inactive in Mr. Doyle's 1984 campaign because plaintiff's sister, Eleanor Foeri, ran against Mr. Doyle. App. 5.

6. After Mrs. Foeri lost the election, Mr. Robinson called Mr. Doyle to inquire whether he and his wife would be reappointed and was told by Mr. Doyle that "other people helped me this time." App. 5.

7. When the next opportunity arose for Mr. Doyle to renominate Mrs. Robinson as he had repeatedly done in the past, he failed to do so. App. 6.

8. At the February 4, 1985, Council meeting, Mr. Doyle nominated 14 out of 15 allotted individuals and excluded Mrs. Robinson. App. 6.

9. Mr. Doyle's decision not to reappoint Mrs. Robinson was politically motivated and the result of patronage practices on his part. App. 6.

10. Mrs. Robinson worked as a police matron from 1983 until February 4, 1985, for the sum of $8.00 per hour. App. 7.

11. The City failed to provide Mrs. Robinson with written notice of its intention to remove her as a police matron stating the cause for said removal. App. 7.

12. The City did not provide Mrs. Robinson with notice or a hearing prior to her removal as a police matron. App. 7.

REASONS FOR DENYING THE WRIT

Based on these findings, the trial court held, and the Rhode Island Supreme Court affirmed, that Ann Robinson's First and Fourteenth Amendment rights were violated. The petitioner fails to point out any inconsistencies by the Rhode Island Courts with federal constitutional law. There is no conflict alleged with the holdings of any Circuit Courts of Appeal or other state courts. There is no issue of national significance. At best, petitioner disagrees with the decision below. Under this Court's rules, that is simply not a basis for certiorari.

FIRST AMENDMENT ISSUE

A. The First Amendment Holding

The legal principles governing this case are clear and well-settled. On three separate occasions, this Court has ruled that the First Amendment prohibits political retaliation against public employees because of their political views or party affiliation unless those employees occupy policymaking positions. The decision below represents a straightforward application of these undisputed principles.

In *Elrod v. Burns*, 427 U.S. 347, 359 (1976), the Court noted that conditioning public employment on continuing support for those holding political power "unquestionably inhibits protected belief and association." In *Branti v. Finkel*, 445 U.S. 507, 516 (1980), the Court reconfirmed that the retaliatory dismissal of public employees because of their political views violates the First Amendment because of the "coercion of belief that necessarily flows from the knowledge that one must have a sponsor in the dominant party in order to retain one's job."[1] And, in *Rutan v. Republican Party of Illinois*, 497 U.S. 62 (1990), the Court held that the rationale of *Elrod* and *Branti* is not limited to retaliatory dismissals but also applies to decisions about hiring, promotion, transfers, and recall.

Here, the trial court found as a matter of fact that respondent was not reappointed to her position as a

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[1] *Branti* also clarified the reference to policymaking positions in *Elrod* by noting that the critical question in any case is whether "party affiliation is an appropriate requirement for the effective performance of the public office involved." 445 U.S. at 518.

police constable in the East Providence because she supported a political opponent of the former mayor. It is equally clear from the record that respondent's job as a police constable was neither a policymaking position nor a position for which party affiliation or political support represents a bona fide occupational qualification. Given these findings, the decision by the Rhode Island courts that respondent's First Amendment rights were abridged is not only supported, it is compelled, by both *Elrod* and *Branti*.

Indeed, the only halfhearted effort that petitioner makes to distinguish this Court's political patronage cases is to argue that respondent was not dismissed from her job as a police constable, she was simply not reappointed. However, precisely the same argument was made and rejected in *Rutan*. As this Court noted in *Rutan* with regard to a plaintiff who had not been hired: "If Moore's employment application was set aside because he chose not to support the Republican Party, as he asserts, then Moore's First Amendment rights have been violated. 497 U.S. at ___.

In the present case, we are no longer dealing with allegations in a complaint but with findings of fact by a trial judge after a hearing that have been upheld by the state's highest court. If anything, the failure to reappoint respondent to her position as police constable constitutes even a greater First Amendment violation than the failure to hire a new employee without any expectation of continued employment.

The decision below is thus plainly correct. It is also unexceptional in its legal holding. Petitioner may disagree with the outcome, but that is not a basis for granting certiorari. In the absence of any other credible argument for plenary review, the petition for certiorari should be denied.

B. The Due Process Holding

Petitioner's due process argument is equally unavailing. Petitioner does not and cannot dispute the legal proposition that public employees may not be dismissed from their jobs without notice and a hearing if either a property or liberty interest is involved, *see, e.g., Cleveland Board of Education v. Loudermill,* 470 U.S. 532, 542 (1985), and that the question of whether or not a property interest exists in a particular job is primarily a matter of state law, *see, e.g., Board of Regents v. Roth,* 408 U.S. 564, 577 (1972).

Instead, petitioner argues that the City of East Providence has never employed police matrons and that, in any event, respondent's appointment as a police matron was unlawful. The first contention flies in the face of a contrary factual finding by the trial court. The second contention was rejected by the courts below, whose interpretation of state law is of course binding on this Court. *See, e.g., R.A.V v. City of St. Paul,* 505 U.S. at ___, 120 L.Ed.2d 305, 316 (1992).

Petitioner's effort to seek certiorari on either of these two grounds is therefore not only meritless, it borders on the frivolous.

CONCLUSION

For the above-stated reasons, Respondent prays that the Court deny the Petition for Writ of Certiorari.

Respectfully submitted,

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